

ZONING BOARD OF ADJUSTMENT
268B MAMMOTH ROAD
LONDONDERRY, NH 03053

DATE: JUNE 16, 2010

CASE NO.: 6/16/2010-2

APPLICANT: GLEN E. AND KATHY M. FULLFORD
5B QUINCY ROAD
LONDONDERRY, NH 03053

LOCATION: 5B QUINCY ROAD, 5-2C-7B, AR-I

BOARD MEMBERS PRESENT: VICKI KEENAN, CHAIR
MATTHEW NEUMAN, VOTING MEMBER
MICHAEL GALLAGHER, VOTING ALTERNATE
JOE GREEN, VOTING ALTERNATE
JAY HOOLEY, VOTING ALTERNATE

ALSO PRESENT: RICHARD CANUEL, SENIOR BUILDING INSPECTOR/ZONING OFFICER

REQUEST: VARIANCE TO ALLOW LIVESTOCK ON A LOT WITH LESS THAN TWO ACRES AS REQUIRED BY SECTION 2.3.1.4.

PRESENTATION: Case No. 5/19/2010-2 was read into the record with no previous cases listed.

Acting Clerk Joe Green also read Exhibit "A" into the record, a letter from the owner of 5A Quincy Road.

VICKI KEENAN: Okay. Would you come up and please state your name and address and present your case and your application, please.

KATHY FULLFORD: My name's Kathy Fullford. And I'm at 5B Quincy Road. It's an application for a variance. What else do you...I'm sorry, what else do you need from me? Do I need to read my...? Okay.

VICKI KEENAN: Yeah, talk about your application and why you think you satisfy each of the criteria, the numbered points on the application.

KATHY FULLFORD: I would like to read my application to you and I also have some responses to the letter [Exhibit "A"] that was just read. There's some information on that that's inaccurate and I

just wanna be able to talk about that, too. The variance is requested from Section 2.3.1.4 .1 of the zoning ordinance for the following reasons: I have poultry at our residence and it's zoned AR-I. I believe that the variance is not contrary to the public interest. Livestock is permitted for properties that are zoned AR-I. What is the difference from the original lot at the time of the build is a short point two-o (.20) acres. We're a duplex and the entire lot is point two-o (.20) acres short of two (2) acres and at the time of build, when the property became a duplex, each half of the duplex takes on half of that property. So I have just under an acre and Jim has just under an acre of property. And so I believe that the lot was, at the time that the lot was divided, the location of the building in relation to the other buildings and lots are the same, are within the two (2) acre space. I originally, when I filed this variance, I had eight (8) chickens. I now have five. About three (3) weeks ago when we had the significant heat, I lost three (3) of them. So I only have five hens right now. The distance of the hen house in relation to the homes around me is...we meet the twenty five (25) foot requirement for boundary. And then hen house is actually two hundred (200) feet, approximately two hundred (200) feet from the road, behind...it's on the very farthest part of the property. I don't believe that there is an appearance, sound or smell issue with any of the abutters. The closest house to the north side of our property is two hundred (200) feet away. The hen house is about three (3) feet by four (4) feet and it is...The house that abuts to my left or the west side of our property is approximately seventy five (75) feet away from the hen house. The closest home to the east, which is beyond the other half of the duplex, is over two hundred (200) feet away. The immediate side, 5A, which is the Spear's residence, that side of the duplex is over seventy (70) feet away from the hen house. The total southern border of the property abuts wetland which is privately owned by the residence at 2 Winthrop. Beyond their property is wetland and sand pit and Continental Paving, so behind us, in essence, the back part of our property at the tree line where it's wet, at wetlands, although it is privately owned beyond us, it is unusable. It is all wet. So there is no dwellings and there won't be any dwellings for quite some distance. Many acres. I believe there's at least two (2) lots on 2 and 4 Winthrop. On the handout, on page two (2), states that the courts interpret this to mean, not contrary to public interest, to mean that no harm will be caused to the public by granting the variance. Livestock is permitted in AR-I zone. The chickens don't pose any disturbance regarding sound. I don't have a rooster. And I submitted some pictures. And I don't have any large pictures. I have a packet of pictures that show...

JOE GREEN: You can just bring them up if you'd like. We can pass them out.

JAYE TROTTIER: It's the same...

VICKI KEENAN: They're on the application.

MICHAEL GALLAGHER: Is that what...? We're looking at them here.

VICKI KEENAN: Yeah.

JOE GREEN: Okay.

KATHY FULLFORD: A packet of them. But you can see by looking at the pictures, I took pictures not only from the abutter's property lines but of all of the properties around, even across the street, many of them, you can't even see the hen house. From 6A and B it's difficult to see. From 4A and 4B it's difficult to even see the hen house. The hen house is set way back on the back of the property against the tree line. And around the hen house, I have a perennial garden. It's surrounded by peppermint, spearmint and lemon balm and wisteria and clematis. I've gone to great lengths to stain the hen house so that it blends in, along with the wooded, natural environment and keep the yard groomed and the gardens groomed. There hasn't been any smell. I keep the hen house maintained. The spirit of the ordinance is observed, I believe, because the spirit of the ordinance indicates that two (2) acres would be necessary to create enough of a buffer in order to have livestock. I only have five (5) hens. I don't have anything else. So I believe that the location of the hen house in relation to the other lots around me, being in the area of the most southern perimeter boundary of the property, keeps the hens out of sight and it doesn't create any issues of noise because we don't have a rooster. At this point, I just wanna say that I have had my hens since 2003. I've had them for seven (7) years. Just recently, I lost three (3) of them but I have had up to twelve (12) and this is the last. I haven't had any since...new chicks since 2005 and there's never been an issue regarding me having the hens from anyone in the neighborhood, including the other half, the Spears, on 5A. Recently, in 2008, there was a dispute...there has been a dispute between the two (2) sides with regards to shared homeowners insurance and I believe that as a result of that dispute, this has become an issue. And so the kids next door have been a part, as much a part of the brood chicks and playing with them in the yard, playing through the coop, collecting their eggs and being on the property as they ever have, until we had a dispute between insurance. I currently am covering the entire structure for homeowner's insurance, because of their refusal to pay and it's caused a problem. So, and I never received a phone call from the Spears about an issue with the hens. I only received the notice from the Animal Control. I went over to the Police Department today to get a copy of all of the records. There's nothing on file in the police department of any complaints from anyone in the town regarding anything at my address. So I just need to make note that I believe that there's never really been an issue and...The one thing that where substantial justice is done, according to the handout, one could understand that an injustice occurs with any loss to the person that's not outweighed by a gain by the public. And I just need the Town to know that I have had them for seven (7) years and they're my pets and I just don't want to lose them. I will have to, if the variance isn't granted, I will need to find homes for them. Anyway... there is one part of...the one thing about our property that I think is in favor of granting us a variance, although I don't own an acre and two (2) acres is required, there is enough property that's behind me that is, if I were to approach my neighbors, if I had the money to purchase the land behind me to meet the dimensional requirements, it would be possible to be able to meet those requirements, however, purchasing that property or obtaining the property to meet the dimensional requirements wouldn't serve any benefit to the public because the property is all under water. So it wouldn't add to any physical, usable space in order for me to my house my hens. It's not like it would free up space for my hens to be or to create more of a buffer. I'm sure I'm skipping some other parts.

VICKI KEENAN: Actually, do you wanna address number four (4)?

KATHY FULLFORD: I'm sorry?

VICKI KEENAN: Number four (4) and number five (5).

KATHY FULLFORD: Oh, okay. The values surrounding the properties are not diminished. And the values of the property would not be diminished. The original lot, at the time zoning was...is point two-o (.20) acres difference to meet the requirement and even though that is for the entire lot together, both A and B, my hen house is three (3) by four (4) feet and it's surrounded by the gardens and it is on the furthest southern border of the property and if you...I submitted to the Town some maps and I can show that...let's see...I have a tax map and it's a combination of five (5) and two (2). It's this one here. If you have it...

VICKI KEENAN: Mm-hmm.

KATHY FULLFORD: If you look there, you can see where our property is. It's in this most southern/western corner of tax map five (5) on Quincy Road. And it should be shaded in there right as Winthrop, you take a left onto...as Quincy splits from Winthrop. And you can see the southern...I don't know if you can see what I see but if you can see the southern border of our property, is wet. And it's right at the tip of the lower Nesenkeag wetland and so, as you look at our property, you can see that 2 Winthrop and 4 Winthrop, their properties extend all the way back behind into the wet as well, so that picture clearly shows that there is abutting property that is wetland, undeveloped, unused. Although it's private, there won't be anything built behind us for a long time. The thing that makes our property special, even from the properties across the street, which are also duplexes, is...and there is wetland behind there, the difference between our property and that property that would allow variances is that what abuts their property on their furthest end are more residences. So there is residential, there are more homes behind there. Behind us there is nothing. And then I also submitted a copy of the wetland map, the classification of the lower Nesenkeag wetland map that looks like this. And you can see that it's where Quincy Road and Winthrop, where our little corner is right there, abuts the wetland and that it's classified as forested. And to further show that the hen house is on the furthest part of the property, away from all abutters, there's another map that looks like this, it's an aerial and you can find 5A and B Quincy Road. You can see how the property itself is point two-o (.20) short of two (2) acres. Jim and I split that right down the middle, so I have point nine (.9) and he has point nine (.9). But the division is...you can see that the southern part of our property abuts the wetlands, the forested wetlands, and if you look, there's a...I think I put a spot on it, in the very...right along the tree lines, there's a yellowish, light green area. That's where my hen house is. If you look at the relationship of the hen house to my abutters, the hen house is closer to my neighbors the Snyders, than it is to the other half of the duplex. And you can see that all that area behind us is a natural buffer. Those are the...I had one other picture, one other diagram that was just...it shows that...it's this diagram that shows that the hen house is about two hundred (200) feet back in on the property from the road, which is quite a distance. And that our property also has the largest...our conjoined lot has the largest amount of frontage than all of the other properties in the neighborhood. So what that means is that with the hen house being as far back as the tree line, that it is probably the most distance to any other dwelling in the neighborhood. If you go back to the aerial photograph, you can see how far away it is from everyone and from the street, it's hard to even see the hen house. So the point five (5), the literal enforcement of the provision of the ordinance would result in unnecessary hardship. There's two (2) parts there and I'm not sure if I'm interpreting it

properly but I think that it qualifies for both. It says for purposes of the subparagraph, unnecessary hardship means that owing to special conditions of the property that distinguish it from other properties in the area, that if no fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of the provision to the property...and I just wrote if the variance is not granted, it will cost me hardship to have someone take the hens from me or to destroy them. And I could, I suppose, to meet the dimensional requirements, propose to purchase the property behind me but it would serve no purpose because it would not be usable. It wouldn't increase the usable space for the hens. And the criteria for the subparagraph's not established, an unnecessary hardship will be deemed to exist only if owing to special conditions of the property that distinguish it from other properties and I just explained that, I think, with the wetlands behind me...The only other thing that I needed to point out, in the letter, if I could, did I answer...?

VICKI KEENAN: I don't think you had addressed the letter.

KATHY FULLFORD: Okay. The letter, at no time have the Spears contacted me directly as a problem with the hens. The only thing that I was told was last year, when the kids were in the yard and my dogs were on the run, I asked that they mind the boundary because I was concerned that the kids and the dogs and that's when I was told to keep the chickens on my side. So I kept the hens penned up and I have for, it's been almost two (2) years. In the letter that the Spears submitted and the pictures, it says in the letter, in like the sixth paragraph, it says that photos two (2), three (3), and four (4) show the chickens roaming freely over both properties, including the area where the children play. And if you look at their pictures, that clearly is not accurate. In photo two (2), it doesn't show any chickens and in photo three (3), it does show chickens, but they're on my property. So there's one (1) photo of one (1) chicken underneath their deck. That's clear.

MICHAEL GALLAGHER: I'm assuming that's photo four (4) here.

KATHY FULLFORD: Yes. And the only reason why I know that that's their deck, that's accurate that's their deck, is because of the footing underneath their deck. So where the letter would lead you to believe that all of the pictures are representative of my total disregard, I don't believe that's true. The other thing that I need to point out in the photographs that they've presented is that none of these photographs are dated and, as I explained earlier, there has, until the past, until I've been having to take care of the insurance, there has not been any difficulty and so I don't know...There was as time when I did let the hens run loose. There wasn't a problem. No one ever complained. And these photographs, the one photograph with the pen being open, could have been taken at that time when they didn't have a problem with them. The photographs that I submitted have dates on them. I clearly took them the day that I needed to present the paperwork to you folks so that you could have an accurate picture, a recent picture of what the property looked like. The other thing in the photographs is that they're taken at different times. Clearly, the foliage is different in pictures two (2) and picture three (3). You can see that photograph one (1), I believe is recent and I know that because of the snow fencing that's in my neighbor's yard, the orange snow fencing, that was recently up. You can see the foliage. If you look on picture two (2) and picture three (3), they're at different times of the year, there isn't any foliage around my hen house. So those aren't recent pictures. And

the notice that I received from the Animal Control is in May of this year. That's the only notice that I ever received. So, I'm not sure that I'm...I'm certain that I have kept the chickens penned up and that short of an occasioned hen getting loose, I have taken a tremendous responsibility for them. And I just would like to be able to keep the five (5) hens that I have.

VICKI KEENAN: Sure.

GLEN FULLFORD: Glen Fullford. I first would like to set the panel at ease and let you know that Frank Purdue is not trying to gain a foothold in Londonderry. There's five (5) chickens here. The fact of the matter is, these are geriatric. I mean, they're probably not gonna live more than two (2) or three (3) more years. Is there a possibility that a variance could die with her last chicken? I know that sounds strange. You look at some of these photographs and we have neighbors here that may be willing to testify that as far as odor and noise and visual, there's really been no offense. You look at, I mean, all of these photographs that Kathy has submitted are dated and, you know, talk about the shaded area underneath their deck, if you look...you've got a lot of pictures here...

KATHY FULLFORD: Oh, I'm sorry. Yeah, no...one of the things that was clear that they weren't recent...

VICKI KEENAN: Excuse me, can I interrupt you for a moment?

GLEN FULLFORD: Yup.

VICKI KEENAN: I just ask that the further testimony provide new evidence beyond what was already presented. Okay?

KATHY FULLFORD: Okay.

GLEN FULLFORD: Okay. She has gone through incredible lengths to keep the place clean and odor free and, in fact, it is. And again, I think we probably have some neighbors here that would testify to that. And truly, nothing...there have been absolutely no problems until this two (2) year incident with the insurance. And the fact of the matter is, you know, if they considered the chickens a health risk when their kids were even younger, they literally had them in the chicken pen and in the coop itself. So, I mean, there really is no health risk there. I mean, we've got photographs of underneath their deck where they've got a plow and plow frame right next to a child's swimming pool. I mean, I see that as being more of a health risk than five (5) chickens. In my honest opinion, I feel that this is just a vindictive maneuver. I really do. That's about all I have to say.

VICKI KEENAN: Okay. Do you have anything else that you want the Board to hear?

KATHY FULLFORD: No, I went through all of the maps and the pictures and I'm sorry that the Spears aren't here to be able to talk about their concerns because I would like to be able to address whatever there are and honestly, there just hasn't been a problem and I would very much like to have the variance.

VICKI KEENAN: Okay. We're gonna bring it back to the Board for questions and I'll start, if that's okay. How...yeah?

MICHAEL GALLAGHER: Can I just...? Just, you know, for my own edification here, this got brought forward by a...you guys were handed a ticket or...?

KATHY FULLFORD: I...this is...

MICHAEL GALLAGHER: ...which is...

KATHY FULLFORD: I came home from work and found a Town of Londonderry Canine Control notice in my mailbox.

MICHAEL GALLAGHER: Okay.

KATHY FULLFORD: And when I went to the Police Department, there was no record of it. Patty [Melcher] wrote me a note, said there's no records on file.

VICKI KEENAN: How far is the coop from 5A's property side or line?

KATHY FULLFORD: I'm gonna say seventy (70) feet. I think I wrote it in here. I think I did talk about it.

VICKI KEENAN: I missed that.

KATHY FULLFORD: I will find it.

GLEN FULLFORD: It does say seventy (70) feet.

VICKI KEENAN: Seventy (70) feet. And how about from 7A? From the lot line for 7A?

KATHY FULLFORD: From the lot line of 7A?

GLEN FULLFORD: I think it was seventy five (75), [indistinct].

KATHY FULLFORD: I think it's seventy five (75). From the lot line of 7A, that's not...it is from the house. From the building, it's seventy five (75) feet.

VICKI KEENAN: Okay.

KATHY FULLFORD: It meets the twenty five (25) boundary set.

VICKI KEENAN: Okay. Okay.

MICHAEL GALLAGHER: Richard, does the...where this is...two (2) acres is what is required, this is two (2) acres that are shared.

RICHARD CANUEL: That's right.

MICHAEL GALLAGHER: I gather you each own an acre.

KATHY FULLFORD: Half.

MICHAEL GALLAGHER: Or point nine (.9).

KATHY FULLFORD: We own...right. That's correct.

RICHARD CANUEL: Yeah, basically being a sort of condex arrangement, you have, essentially, an invisible property line between those two (2).

JOE GREEN: So this is not...this is more than half away from the what's allowed.

VICKI KEENAN: Mm-hmm.

RICHARD CANUEL: Yeah, less than half of what's required.

MATT NEUMAN: Yeah, we're not looking at almost two (2) acres. It's point nine (.9).

JOE GREEN: Right. It's point nine (.9).

VICKI KEENAN: It's point nine (.9), right.

JOE GREEN: Right. So I just want to make that clear.

VICKI KEENAN: I don't have any more questions. I'd be curious to hear from the people out, sitting there.

MATT NEUMAN: I just have a quick question.

VICKI KEENAN: Yeah, go ahead.

MATT NEUMAN: Now, this being a condex...

VICKI KEENAN: [indistinct] have anything to say.

MATT NEUMAN: [indistinct]?

VICKI KEENAN: Sorry. No, I'm sorry.

MATT NEUMAN: Really? Are you sure?

VICKI KEENAN: I am. Mm-hmm.

MATT NEUMAN: Thanks. ...condex, it's a condominium...

KATHY FULLFORD: Mm-hmm.

MATT NEUMAN: ...really, between...with two (2) units.

GLEN FULLFORD: It's an association.

KATHY FULLFORD: It's an association.

MATT NEUMAN: Right. Now, in your association bylaws, does it prohibit any livestock or anything?

KATHY FULLFORD: Whatever the association agrees upon, and I'm fifty (50) percent and so is the other half. And so I don't believe...I know that the bylaws, and my neighbors can talk as well about that, because our bylaws are...essentially are the same between the duplexes, from anything, from having rugs hanging over the railing...

MATT NEUMAN: Mm-hmm.

KATHY FULLFORD: ...to, I mean, and because it's the two (2) halves, the covenants between the two (2) halves, we're the...it's me and Jim, so...

MATT NEUMAN: Right. But does it speak specifically to livestock at all?

KATHY FULLFORD: I don't believe so. I don't believe so. I would have to look through my paperwork. I have the bylaws with me but I have to look through it. I think...I don't know, honest...I can't say honestly, so...But I could get that information for you if you wanted it.

MATT NEUMAN: No, I was just wondering if you had researched that because, I mean, that could be...I know that, you know, it's tough with a condex situation because it is a fifty-fifty type of deal. Unless you're bringing in...I'm sure, it allows for some sort of arbitration.

KATHY FULLFORD: Well, and I believe that that's...and I believe that that would be the case. There is common...we share the well, we share the septic.

MATT NEUMAN: Mm-hmm.

KATHY FULLFORD: There is common property, so I...but, you know, the bylaws talk about everything from paying your homeowner's insurance bill, to...

MATT NEUMAN: Right.

KATHY FULLFORD: So...

MATT NEUMAN: And the other thing was, now you've got five (5) left?

KATHY FULLFORD: Five (5) hens, yes.

MATT NEUMAN: Do you see yourself wanting to get more than that or are...?

KATHY FULLFORD: No, I just don't want to...I just wanna have the same five (5) hens that I have and, you know, if getting a variance means just keeping the five (5) that I have and not getting any more, then that's what I will do. If the variance will allow me to keep a few, then that's fine. They don't live forever. Like Glen said, I have had them for seven (7) years, I have probably three (3) of them that are about seven (7) years old. I have probably about two (2) of them that are just four (4) years old, so, you know, I just don't want to lose the five (5) that I have.

MATT NEUMAN: Okay.

JOE GREEN: Richard, a variance would go with the property anyway? It wouldn't matter if five (5) came in or twelve (12) came in. It's a variance.

MATT NEUMAN: Well, we could put a restriction on it.

RICHARD CANUEL: Well, that's right, you can do that. Absolutely.

VICKI KEENAN: Yeah.

JOE GREEN: We can put a restriction?

RICHARD CANUEL: Sure you can.

JOE GREEN: Okay.

RICHARD CANUEL: Of course.

MATT NEUMAN: We could limit it to the existing five (5). No future hens to be added or livestock.

KATHY FULLFORD: I would be happy to put up a fence between the two (2) halves of the duplex. I'd be happy to clip their wings. Whatever it would take to be able to keep them.

MATT NEUMAN: I'm just curious. What would clipping their wings do?

KATHY FULLFORD: I think that I have one that jumps the fence. I mean, I have not allowed the hens out on their own in two years and I have one that has jumped the fence. They're not supposed to fly but they think they can.

MATT NEUMAN: Happens to us all.

[laughter]

VICKI KEENAN: We have to talk Matt off the ledge all the time.

MATT NEUMAN: Kind of...it happens.

VICKI KEENAN: Sorry.

MATT NEUMAN: That's alright.

VICKI KEENAN: Any more questions from the Board? Seeing none, let's open it up to the public. Is there anyone in the audience...? Yes. Please make sure you state your name and address for the record. Okay.

PATRICIA CARR: My name's Patricia Carr and I live at 6A Quincy Road. I live directly across the street as she speaks about the north boundary. And I've lived there for twenty two (22) years and so she's been my neighbor since she moved in and I just have to say that I've never had a problem with the chickens. I do live across the street, so it's a good distance and I don't hear them. I don't see them. I don't smell them. And I can't really add anything else. I was just eager to get up and move it along, so...

MATT NEUMAN: Thank you.

PATRICIA CARR: But I didn't want to speak on behalf of Kathy to say that I've known her the entire time she's lived here and I don't...she's, you know, an upstanding person in her integrity and that I think that if there's something could be done to allow her to keep these, whether it's the fence or a variance. My main concern was I didn't want to have a variance and then come home one day and find a cow in the front yard. That's why I wanted to come, is just...

VICKI KEENAN: Mm-hmm.

PATRICIA CARR: So I would appreciate if there's some sort of...if you could restrict to this kind of livestock, that would be something I would appreciate. And that, you know, if she ever did want a cow, that would go through this at that point again. So that would be my input and I'd appreciate that. Thank you for your time.

VICKI KEENAN: Thank you.

PATRICIA CARR: Okay.

CHRIS SNYDER: My name is Chris Snyder and I'm her neighbor from 7A Quincy. I've been there for ten (10) years and have not had any trouble with the residence of, you know, with Kathy and the other half. On a number of occasions, I've seen Amy and the kids crawl into the chicken coop barefoot. I've seen them play at their fire pit. That's Jim and Amy's fire pit, which has been ablaze at night and not cleaned up in the morning. Beer bottles, cans throughout. They've had a broken fence in front of their driveway at the entrance for a number of years. Kids jumping and playing on that. The plow has been, you know, parked in the front yard, parked underneath their deck. I don't think this is a safety issue. I think Glen hit the nail on the head by saying it's some sort of revenge or something just to get back at something that happened between the Fullfords and the other half. They're thirty five feet from my property line and I have not had one trouble with them, any of their feces. They roamed my yard prior to her closing their door at the request of Jim and Amy. I think it would be a shame if she had to get rid of them because of plus or minus a tenth (1/10) of an acre. But there's been no trouble at all on my side. And I have...from my house, I can see the chicken coop from the kitchen, from the deck, from the garage, from the driveway, from the backyard. There's no smell, there's no...it's not unsightly. It's actually kept up pretty nice. It's all flowered and gardened, so I would hope that you would at least consider some sort of variance to allow Kathy to keep them. Okay?

VICKI KEENAN: Thank you.

CHRIS SNYDER: Thank you.

MICHAEL GALLAGHER: Richard? Oh.

VICKI KEENAN: We'll let them finish? Okay.

AMY ANDERSON: My name's Amy Anderson. I live at 6B Quincy, which is across the street. I'm actually directly across the street from Jim and Amy. So I'm like at about a forty five (45) to Kathy's place. We've lived there almost six (6) years and our big joke is, we have a five (5) year old and a seven (7) year old and we've had one (1) chicken that actually crossed the street two (2) years ago. My kids, of course, thought it was great, but as soon as we saw it and we heard it, you know, very, very minimal sound, we contacted Kathy and she eagerly got it across the street. We have no questions, we have no concerns. My biggest concern was like my neighbor, Pat was, is that we wanted to make sure that the livestock was only limited to the chickens that she has currently 'cause I would definitely have huge concerns if I came home one day and, you know, or I was contacted about having any additional livestock 'cause when I think of livestock, I think of, you know, cows, horses, sheep, things like that, and I definitely don't want anything of that nature. But we've never had any problems besides that one (1) little chicken and that was almost two (2) years ago, so I rarely ever see them, you know, out in her yard. I never smell anything. I don't have any problems with

them as long as...and I definitely am in agreement with the variance as long as it definitely is attached to, you know, the chickens and five (5) or eight (8) would be okay with me.

VICKI KEENAN: Thank you. Okay, seeing no one else, we are going to close the public portion and we're gonna bring it back to the Board for deliberation.

DELIBERATIONS:

VICKI KEENAN: Mike, you had a question for Richard?

MICHAEL GALLAGHER: If this lot was two (2) acres, is there anything in the ordinance that, where it's shared, that would delineate the other person's objection? In other words, if that was two (2) acres and you and I shared it and you wanted it on, I didn't...?

RICHARD CANUEL: Well, although the property isn't necessarily shared, you know, by condex agreement, which the Town does not enforce anyway, the ordinance requires that the lot be two (2) acres. Theoretically, this lot may be, in whole, is probably just shy of two (2) acres. Even though that property is shared, more or less, it's close to the two (2) acre requirement. Because the requirement is for the lot.

MICHAEL GALLAGHER: So if the lot was two (2) acres, two point one (2.1) acres, there would be nothing I could do.

RICHARD CANUEL: Yeah. The only requirement then would be the separation of the pen from the property lines.

MATT NEUMAN: So we should be looking at this lot in total? So as the...?

VICKI KEENAN: Combined? Yeah.

RICHARD CANUEL: I would look at it in two (2) terms. One (1) term of the total size of the lot meeting close to the two (2) acre requirement and then in terms of separation for the pen, because it's a condex situation, like I said, you have that invisible property line in between, would require the application of that twenty five (25) foot pen setback from that middle line as well.

MATT NEUMAN: From the middle...?

JOE GREEN: So I'm glad that we clarified that 'cause I just asked you a few minutes ago and you said there's two (2) people on this property line and I wrote down right after the comment that it's not just one tenth (1/10) short, it's one point one (1.1) tenth short because it's two (2) people that own less than two (2) acres, so that means we're really only talking about point nine (.9) of an acre. I thought we'd clarified that.

RICHARD CANUEL: Well, it's a shared lot by condex agreement.

JOE GREEN: Yup.

RICHARD CANUEL: But the lot itself, if you look on the map there, it shows it as one (1) large parcel.

MICHAEL GALLAGHER: Right.

JAY HOOLEY: Mm-hmm.

JOE GREEN: But how can we give a variance to a lot if half of the ownership doesn't want it? A variance.

RICHARD CANUEL: Well that's why I saw, if you look at it, you consider that as an entire parcel, the lot itself would meet the requirement for the minimum area. But because you have that invisible line between that separates ownership, you could apply the requirement for the setback of the pen or enclosure as being twenty five (25) feet from both that invisible line and the other adjoining property lines. So basically, you're applying the criteria to two (2) different aspects of the property.

VICKI KEENAN: Alright, this is a sad case but I'm really struggling with meeting the five (5) points of law. So why don't...can we walk through each point and maybe have a discussion about each one? Does that make sense to everybody on the Board?

JOE GREEN: Yup.

VICKI KEENAN: I think it'll help keep the discussion logical. So, number one (1), granting the variance would be contrary to the public interest. I don't have a passing reason for this other than that the applicant stated specifically that it wouldn't be...you know, the letter that we received from the neighbor...

JOE GREEN: That's public.

VICKI KEENAN: ...I think is...

JOE GREEN: It's [indistinct], right.

VICKI KEENAN: Right. Right. Anyone else have any thoughts on that?

JOE GREEN: Well, I just, you know, I just want to make...as you said before, it's a very touchy situation and, you know, if our hearts were just into it instead of the laws, I mean...

VICKI KEENAN: Mmm.

JOE GREEN: ...it would be, you know, it wouldn't be a question, but the thing is that you can't say that it's not an issue with the public if we have a written statement with a member of the public. It's just clear...

VICKI KEENAN: No, I agree with you. Any other comment on number one (1)? No? Okay. Number two (2), the spirit of the ordinance would or would not be observed because...? Any thoughts on that? I couldn't pass this one either. Matt, do you have any...?

MATT NEUMAN: I, no, I really don't have anything to add there.

VICKI KEENAN: I mean, I know we're looking at the whole lot, which it's close to the two (2) acres, but it's not and then you've got this issue with the...you know, the invisible boundary line...

JOE GREEN: Exactly.

VICKI KEENAN: ...I think, cause a...

MATT NEUMAN: I'm still having a hard time with how we take it as a whole, as a whole lot.

JOE GREEN: I'm not comfortable with taking it as a whole lot, either.

MATT NEUMAN: Because then you have to factor in the other lot owner.

JOE GREEN: Half. Right.

RICHARD CANUEL: Mm-hmm. Exactly. Yeah.

MATT NEUMAN: And that's the problem here.

VICKI KEENAN: Granting the variance would do substantial justice? I go back to that letter again. I'm just gonna read something. Actually, can I come back to that one?

MATT NEUMAN: Sure.

VICKI KEENAN: Can I? Okay.

JAY HOOLEY: I think, if I may...

VICKI KEENAN: Yeah.

JAY HOOLEY: ...it's number five (5) where I'm gonna struggle the most.

VICKI KEENAN: The...

JAY HOOLEY: The...since...I think I looked it up...1978, the rule's been in place. You must have two (2) acres if you're going to have livestock, poultry, horses. And on five (5), owing to special conditions of the property that distinguish it from properties in the area...

VICKI KEENAN: Yeah.

JAY HOOLEY: ...being less than two (2) acres is not particularly unique for a residential property. I'm gonna go out on a limb and guess a great portion, if not possibly a majority of residences in this town sit on less than two (2) total acres. That's...

VICKI KEENAN: I looked at...

JAY HOOLEY: You know, it may be stretch but it certainly, it's not as if it's very unique to be on less than two (2) total acres for a home.

VICKI KEENAN: I looked at the surrounding units as well and tried to get a sense of the acreage and they were all, you know, under...

JAY HOOLEY: Similar.

VICKI KEENAN: ...to. Yeah. Some went so far as to point six nine (.69) or...

JAY HOOLEY: And I don't think that's particularly atypical of a residential subdivision.

VICKI KEENAN: I know.

JAY HOOLEY: That's the piece I couldn't get past.

VICKI KEENAN: Yeah.

JOE GREEN: You know, the other thing was the ordinance, the 2.3.1.4.2. It says "at no time," this is the thing I can't get out of my mind. If I get it out of my mind, I guess it'd be easier for me. "At no time shall a public nuisance be created as to sight, sound, smell or any other action which would interfere with nearby property owner's right." I mean, talk about that nearby property owner. Talking about inside the property itself, I mean, and we're gonna say that this person shouldn't have a judgment on it. You know, it's...

VICKI KEENAN: I read that, too.

JOE GREEN: So...

VICKI KEENAN: So are we all in agreement on number five (5)?

MATT NEUMAN: Yeah.

VICKI KEENAN: I think then...

JOE GREEN: I wish we weren't, but...

VICKI KEENAN: I know. I think, then, there's probably a motion that needs to be made. Anyone?

JOE GREEN: Nobody wants to.

VICKI KEENAN: Can somebody? If somebody's ready.

MATT NEUMAN: Let's see...

VICKI KEENAN: And if you do make a motion to deny, could you state specific reasons for your motion? Are there any points that we need to further discuss?

JAY HOOLEY: I'll make the motion. I'll make a motion to deny case number 6/16/2010-2 for Glen and Kathy Fullford, a variance for livestock on a lot with less than two (2) acres as required by Section 2.3.1.4, 5B Quincy Road, 5-2C-7B, on the basis that there is not a special condition distinguishing that particular property from other properties in the area, that, in fact, the minimum size as outlined in the zoning ordinance is not met.

VICKI KEENAN: There's a motion. Is there a second?

MATT NEUMAN: Second.

VICKI KEENAN: Is there any further discussion regarding the motion? Seeing none, all of those in favor of denying the variance, raise your hand by saying 'aye' or signify by saying 'aye.' I'm sorry.

JAY HOOLEY: Aye.

MICHAEL GALLAGHER: Aye.

MATT NEUMAN: Aye.

VICKI KEENAN: Opposed?

JOE GREEN: Opposed.

VICKI KEENAN: Abstentions? Okay, can you fill out your sheets?

RESULT: THE MOTION TO DENY THE VARIANCE WAS APPROVED, 4-1-0 WITH JOE GREEN IN OPPOSITION.

RESPECTFULLY SUBMITTED,

JOE GREEN, ACTING CLERK

TYPED AND TRANSCRIBED BY JAYE A TROTTIER, SECRETARY

APPROVED JULY 21, 2010 WITH A MOTION MADE BY LARRY O'SULLIVAN, SECONDED BY JOE GREEN AND APPROVED 5-0-0.